

A Public Prosecutor v Amir bin Mahmood & Ors

HIGH COURT (JOHOR BAHRU) — CRIMINAL TRIAL NO 45–8–1995
ABDUL MALIK ISHAK J
12 JANUARY 1996

B *Criminal Law* — *Dangerous Drugs Act (Malaysia)* — *Section 39B(1)* — *Trafficking in dangerous drugs* — *Chemist's report* — *Doubt whether chemist was referring to cannabis or cannabis (Indian hemp)* — *Whether accused entitled to benefit of reasonable doubt* — *Whether to amend charge* — *Dangerous Drugs Act 1952 ss 2, 12(2), (3)* — *Criminal Procedure Code s 158*

C *Criminal Procedure* — *Sentence* — *Imposition of fine* — *Imprisonment in default of payment of fine* — *Whether courts have discretion* — *Criminal Procedure Code s 283(i)(b)*

Evidence — *Adverse inference* — *Failure to call witness* — *Discretion of prosecution to call witnesses* — *When court will interfere with exercise of discretion* — *Evidence Act 1950 s 114(g)*

D

Evidence — *Corroboration* — *Agent provocateur* — *Whether corroboration necessary* — *Considerations* — *Dangerous Drugs Act 1952 s 40A(1), (2)*

Evidence — *Witness* — *Credibility of* — *Lapses in memory while giving evidence* — *Whether the whole evidence should be rejected*

E

Amir bin Mahmood ('the first accused') was jointly charged with Mohd Zahar bin Nor ('the second accused') and Ramsan bin Bujamin (the third accused and will be referred to as 'John') for trafficking 1,835.7g of dangerous drugs namely, cannabis, in contravention of s 39B(1) of the Dangerous Drugs Act 1952 ('the Act') and an offence punishable under s 39B(2) of the Act. The following issues arose at the trial namely, (i) the credibility of the prosecution's witness, an agent provocateur who failed on various occasions to give an accurate account of the whole episode; (ii) the prosecution's failure to call a witness; (iii) the agent provocateur's uncorroborated evidence; and (iv) the government chemist's failure to state in his report that the cannabis was as defined in s 2 of the Act.

F

G

Held, amending the charge and convicting on the amended charge:

H

(1) It is a rule that if a witness had lied on one or two points, it did not necessarily follow that his whole evidence should be rejected. But it is the duty of the court to sieve the evidence and to ascertain what are the parts of evidence tending to incriminate the accused which could be accepted (see p 165H); *Fernando v R* [1959] MLJ 157, *Balasingham v PP* [1959] MLJ 193, *Khoon Chye Hin v PP* [1961] MLJ 105, *Chean Siong Guat v PP* [1969] 2 MLJ 63 and *Tua Kin Ling v PP* [1970] MLJ 61 followed. The lapses in memory experienced by the prosecution's witness did not affect his credibility as there was sufficient damning and incriminating evidence against all the three accused persons (see p 170F).

I

- (2) The offer to the defence of any witness by the prosecution is patently necessary to avoid the presumption in s 114(g) of the Evidence Act 1950. It is trite law that the prosecution in a criminal case has a discretion as to which witnesses should be called, and the court will not interfere with the exercise of that discretion, unless it can be shown that the prosecutor has been influenced by some oblique motive (see pp 169I-170A); *Adel Muhammed El Dabbah v AG for Palestine* [1944] AC 156, *Samsudin v PP* [1962] MLJ 405, *Khoon Chye Hin v PP* [1961] MLJ 105 and *PP v Teh Cheng Poh* [1980] 1 MLJ 251 followed. A B
- (3) An agent provocateur is entitled to protection under s 40A(1) and (2) of the Act. There was no requirement for the evidence of an agent provocateur to be corroborated. The agent provocateur cannot be presumed to be a witness unworthy of credit and his evidence relating to any attempt to abet or abetment of the commission of an offence if done for the purpose of securing evidence against the three accused persons must be regarded as admissible (see pp 170I-171A); *Namasyiam & Ors v PP* [1987] 2 MLJ 336 followed. C D
- (4) The government chemist in the present case was doubtful whether the plant material which he had examined and analysed was cannabis as defined in s 2 of the Act and not cannabis (Indian Hemp) as listed in Pt III of the First Schedule to the Act. As the subject matter of the offence can also be regarded as cannabis (Indian hemp), there exists a nagging doubt the benefit of which should be given to the three accused persons. An accused person is entitled to the benefit of a reasonable doubt in the matter of sentence as in the matter of conviction. Any ambiguity, no matter how slight should be construed in favour of the offender (see p 173C-E); *Ma Shwe Yi* [1923] 1 Ran 751, *Gorakh* (1938) 40 PLR 542, *R v Hepworth and Fearnley* [1955] 2 QB 600, *Tuck v Priester* (1887) 19 QBD 629 and *Re HPC Productions Ltd* [1962] 2 WLR 51 followed. E F G

Per curiam

Section 283(i)(b)(4) of the Criminal Procedure Code ('CPC') enacts that the court passing the sentence of a fine may direct that in default of payment of the fine the offender shall suffer imprisonment of a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced or to which he may be liable under a commutation of sentence. The courts should not arbitrarily apply, as they have done in the past, s 283(i)(b)(4) of the CPC when imposing fines. For a start, the words employed in s 283(i)(b) of the CPC give some measure of discretion to the courts to decide on what to do when imposing fines. The choice is entirely with the court. The word 'may' appearing in s 283(i)(b) of the CPC gives a discretionary power to this court to exercise according to common sense and justice and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet. H I

- A This court has the discretion not to do all or any of the following things as specified therein in s 283(i)(b) of the CPC (see pp 175C, 176B); *Lee v Bude & Anor* (1871) LR 6 CP 576 followed.

[Bahasa Malaysia summary]

- B Amir bin Mahmood ('tertuduh pertama') telah didakwa bersama Mohd Zahar bin Nor ('tertuduh kedua') dan Ramsan bin Bujamin (tertuduh ketiga dan dirujuk kepada sebagai 'John') mengedar 1,835.7g dadah berbahaya, iaitu ganja, yang melanggar s 39B(1) Akta Dadah Berbahaya 1952 ('Akta itu') dan merupakan suatu kesalahan yang boleh dihukum di bawah s 39B(2) Akta itu. Isu-isu berikut timbul semasa perbicaraan iaitu, (i) kebolehpercayaan saksi pihak pendakwaan, seorang ejen provokasi yang telah gagal pada beberapa ketika untuk memberi satu laporan yang tepat tentang keseluruhan peristiwa itu (ii) kegagalan pihak pendakwaan untuk memanggil seorang saksi; (iii) keterangan ejen provacateur itu yang tidak disokong; dan (iv) kegagalan ahli kimia kerajaan untuk menyatakan dalam laporannya bahawa ganja itu adalah seperti yang ditakrifkan dalam s 2 Akta itu.
- D

Diputuskan, memindahkan pertuduhan itu dan mensabitkan atas pertuduhan yang dipinda:

- E (1) Adalah satu rukun bahawa jika seorang saksi telah berbohong mengenai satu atau dua perkara, ianya tidak semestinya berikutan bahawa keseluruhan keterangan beliau harus ditolak (lihat ms 165H); *Fernando v R* [1959] MLJ 157, *Balasingham v PP* [1959] MLJ 193, *Khoon Chye Hin v PP* [1961] MLJ 105, *Chean Siong Guat v PP* [1969] 2 MLJ 63 dan *Tua Kin Ling v PP* [1970] MLJ 61 diikuti. Kehilangan ingatan sementara yang dialami oleh saksi pihak pendakwaan tidak menjejaskan kebolehpercayaan beliau kerana terdapat cukup keterangan yang membabitkan serta menunjukkan kesalahan terhadap ketiga-tiga orang tertuduh itu (lihat ms 170F).
- F
- G (2) Tawaran saksi-saksi oleh pihak pendakwaan kepada pihak pembelaan adalah secara ketaranya perlu untuk mengelak anggapan di dalam s 114(g) Akta Keterangan 1950. Adalah undang-undang mantap bahawa pihak pendakwaan di dalam satu kes jenayah mempunyai budibicara tentang saksi mana untuk dipanggil, dan mahkamah tidak akan masukcampur dalam perjalanan budibicara itu, kecuali jika ianya dapat ditunjukkan bahawa pihak pendakwa telah dipengaruhi oleh motif oblik (lihat ms 169I-170A); *Adel Muhammed El Dabbah v AG for Palestine* [1944] AC 156, *Samsudin v PP* [1962] MLJ 405, *Khoon Chye Hin v PP* [1961] MLJ 105 dan *PP v Teh Cheng Poh* [1980] 1 MLJ 251 diikuti.
- H
- I (3) Seorang ejen provokasi adalah berhak kepada perlindungan di bawah s 40A(1) dan (2) Akta itu. Ianya tidak merupakan satu keperluan bahawa keterangan seorang ejen provokasi harus

disokong. Seorang ejen provokasi tidak boleh dianggap sebagai seorang saksi tanpa kebolehpercayaan dan keterangannya berkaitan dengan percubaan untuk bersubahat atau persubahatan perlakuan sesuatu kesalahan jika dilakukan untuk matlamat memperolehi keterangan terhadap ketiga-tiga orang tertuduh harus dianggap sebagai boleh diterima (lihat ms 170I-171A); *Namasyiam & Ors v PP* [1987] 2 MLJ 336 diikuti.

- (4) Ahli kimia kerajaan dalam kes ini adalah ragu-ragu sama ada bahan tumbuhan yang beliau memeriksa dan menganalisa adalah ganja seperti yang ditakrif di dalam s 2 Akta itu dan bukan ganja (hemp India) yang disenaraikan dalam Bahagian III Jadual Pertama Akta itu. Oleh kerana hal perkara kesalahan itu juga boleh dianggap sebagai ganja (hemp India), wujudnya satu keraguan di mana faedah keraguan itu harus diberi kepada ketiga-tiga orang tertuduh. Seseorang tertuduh adalah berhak kepada faedah keraguan yang munasabah di dalam perkara penghukuman seperti di dalam perkara sabitan. Sebarang kekaburan, tidak kira berapa sedikit, harus ditafsirkan memihak seseorang pesalah (lihat ms 173C-E); *Ma Shwe Yi* [1923] 1 Ran 751, *Gorakh* (1938) 40 PLR 542, *R v Hepworth and Fearnley* [1955] 2 QB 600, *Tuck v Priester* (1887) 19 QBD 629 dan *Re HPC Productions Ltd* [1962] 2 WLR 51 diikuti.

Per curiam

Seksyen 283(i)(b)(4) Kanun Acara Jenayah ('KAJ') mendirikan bahawa mahkamah ketika memberi hukuman denda boleh mengarahkan supaya dalam keingkaran pembayaran denda itu pesalah akan dipenjarakan untuk had masa tertentu, pemenjaraan yang mana akan dijadikan lebih daripada apa-apa pemenjaraan lain kepada mana beliau mungkin dihukum atau kepada mana beliau mungkin bertanggungjawab di bawah peringanan hukuman. Mahkamah-mahkamah tidak patut memakai secara sewenang-wenangnya, sepertimana yang telah dilakukan sebelum ini, s 283(i)(b)(4) KAJ ketika mengenakan denda. Sebagai permulaan, perkataan-perkataan yang digunakan dalam 283(i)(b) KAJ memberi sejumlah budibicara kepada mahkamah-mahkamah untuk memutuskan apa yang perlu dibuat semasa mengenakan denda. Pilihannya adalah terulang secara keseluruhannya kepada mahkamah. Perkataan 'boleh' yang hadir di dalam 283(i)(b) KAJ memberikan suatu kuasa budibicara kepada mahkamah ini untuk dijalankan mengikut akal dan keadilan dan bukan mengikut kehendak hati atau ragam tidak menentu orang kepada siapa ianya diamanahkan atas anggapan bahawa beliau adalah berhati-hati. Mahkamah ini mempunyai budibicara untuk tidak membuat kesemua atau mana-mana daripada perkara-perkara berikut sepertimana yang dibutirkan di situ di dalam 283(i)(b) KAJ (lihat ms 175C, 176B); *Lee v Bude & Anor* (1871) LR 6 CP 576 diikuti.]

A Notes

For a case on the definition of cannabis, see 4 *Mallal's Digest* (4th Ed) para 116.

For cases on the imposition of fines, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2438–2444.

B For cases on the adverse inference for failure to call a witness, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 92–97.

For cases on corroboration with regard to the evidence of agents provocateur, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 548–551.

C Cases referred to

Abdul Jalil bin Abdul Satar v PP [1991] 2 MLJ 194

Abdullah bin Yaacob v Pendakwa Raya [1991] 2 MLJ 235

Abdullah Zawawi v PP [1985] 2 MLJ 16

Adel Muhammed El Dabbah v A-G for Palestine [1944] AC 156

D *Balasingham v PP* [1959] MLJ 193

Chean Siong Guat v PP [1969] 2 MLJ 63

Datuk Harun bin Hj Idris v Officer-In-Charge, Pudu Prison [1981] 2 MLJ 72

Fernando v R [1959] MLJ 157

E *Jayaraman & Ors v PP* [1979] 2 MLJ 88

Gorakh (1938) 40 PLR 542

HPC Productions Ltd, Re [1962] 2 WLR 51

Khoon Chye Hin v Public Prosecutor [1961] MLJ 105

Lee v Bude & Anor (1871) LR 6 CP 576

Ma Shwe Yi [1923] 1 Ran 751

F *Mohd Osman bin Pawan v PP* [1989] 2 MLJ 110

Munusamy v PP [1987] 1 MLJ 492

Namasiyiam & Ors v PP [1987] 2 MLJ 336

PP v Chew Yoo Choi [1990] 2 MLJ 444

PP v Salamah bte Abdullah and PP v Ong Eng Kiat [1947] MLJ 178

G *PP v Sulaiman bin Ahmad* [1992] 4 CLJ 2283

PP v Tan Kim Kang & Ors [1962] MLJ 388

PP v Teh Cheng Poh [1980] 1 MLJ 251

R v Hepworth and Fearnley [1955] 2 QB 600

R v Ball (1951) 35 Cr App R 164

Samsudin v PP [1962] MLJ 405

H *Shukri bin Mohamad v Pendakwa Raya* [1995] 3 AMR 2695

Singah Mohamed Hussin v PP [1973] 2 MLJ 109

Tan Kheng Ann v PP [1965] 2 MLJ 108

Teh Lee Tong v R [1956] MLJ 194

Tua Kin Ling v PP [1970] 2 MLJ 61

Tuck v Priestler (1887) 19 QBD 629

I**Legislation referred to**

Criminal Procedure Code ss 34, 112, 158(ii), 170, s 283(i)(b)(4), 283(i)(g), 422

Dangerous Drugs Act 1952 ss 12(2), (3), 40A(1), (2)
Evidence Act 1950 s 114(g)

A

Iskandar Shah bin Ibrahim (Deputy Public Prosecutor) for the Public Prosecutor.

Wan Azman bin Wan Ahmad (*Lua & Mansor*) for the first accused.

Wan Mansor bin Wan Mahmood (*Roslani & Af Ariffin*) for the second accused.

B

Hisham Teh Poh Teik (*Teh Poh Teik & Associates*) for the third accused.

Abdul Malik Ishak J: Amir bin Mahmood ('the first accused') was jointly charged on the following amended charge with that of Mohd Zahar bin Nor ('the second accused'):

C

Bahawa kamu pada 22 Julai 1994 jam lebih kurang 11.20 malam di tempat letak kereta, Lapangan Terbang Sultan Ismail, Senai, Johor Bahru, dalam Negeri Johor, bagi mencapai niat bersama kamu semua, telah didapati mengedar dadah berbahaya iaitu 1,835.7g cannabis dan dengan itu kamu telah melakukan satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952, dan boleh dihukum di bawah s 39B(2) Akta yang sama dibaca bersama-sama dengan s 34 Kanun Kesiksaan (FMS Cap 45).

D

Kamsan bin Bujamin (the third accused and for the purpose of this judgment he will be referred to as 'John') was charged on the following amended charge:

E

Bahawa kamu pada 22 Julai 1994 jam lebih kurang 11.20 malam di tempat letak kereta, Lapangan Terbang Sultan Ismail, Senai, Johor Bahru, dalam Negeri Johor, telah didapati melakukan persediaan untuk tujuan memperedarkan dadah berbahaya, iaitu 1,835.7g cannabis dan dengan itu kamu telah melakukan suatu kesalahan di bawah s 39B(1)(c) Akta Dadah Berbahaya 1952, dan boleh dihukum di bawah s 39B(2) Akta yang sama.

F

Mr Iskandar Shah bin Ibrahim, the learned deputy public prosecutor, applied for all the three accused persons to be tried together under s 170 of the Criminal Procedure Code ('the CPC'). The three defence counsels for all the three accused persons acceded to this request and so the trial proceeded on that footing. Section 170 of the CPC envisages the situation where there has to be more than one accused person and that they may be accused of the same offence or different ones, and the offences were committed in the same transaction. Obviously, s 170 of the CPC by the very words employed therein provides for joinder of offenders. Perhaps the best example of s 170 of the CPC is reflected in the case of *Jayaraman & Ors v PP* [1979] 2 MLJ 88 where eight accused persons were tried together on four charges each of culpable homicide not amounting to murder. Then again in the case of *Tan Kheng Ann v Public Prosecutor* [1965] 2 MLJ 108 where 64 accused persons who were charged with three offences of illegal assembly with intent to cause the death of three persons were tried jointly as the offences were said to be committed in the same transaction. Be that as it may, by way of an observation, I need to state the obvious. It is this.

G

H

I

As an agent provocateur detective lance corporal 68642 Arshad bin Awang (PW5—'Arshad') played a key role in the arrest of the three

- A accused persons. One would have thought that Arshad would be able to give flawless and impeccable evidence but as Arshad took to the witness box his lapses in memory were quite apparent. The learned deputy public prosecutor had, at least on two occasions, to remind Arshad to be careful and to remember the whole episode accurately. I felt that this preliminary observation of Arshad should be recorded as the prosecution must have been under the delusion that Arshad was an exemplary witness. On discrepancies in the evidence of witnesses, there are reported authorities that need to be referred to and would, in the final analysis, decide the quality of Arshad as a prosecution witness.

- C In *Fernando v R* [1959] MLJ 157 at p 159, Rose CJ said:
... discrepancies in the accounts given by these various officers is a matter which might well be thought to be in favour of their truthfulness rather than the reverse.

- D In *Balasingham v Public Prosecutor* [1959] MLJ 193 at p 194, Ismail Khan J held the view that:

After all there is no legal presumption that an interested witness should not be believed. He is entitled to credence until cogent reasons for disbelief can be advanced in the light of evidence to the contrary and the surrounding circumstances.

- E In *Khoon Chye Hin v PP* [1961] MLJ 105 at p 107, Thomson CJ laid down a very sensible rule when he said:

- F If a witness demonstrably tells lies on one or two points then it is clear that he is not a reliable witness and as a matter of prudence the rest of his evidence must be scrutinised with great care and indeed with suspicion. To say, however, that because a witness has been proved a liar on one or two points then the whole of his evidence 'must in law be rejected' is to go too far and is wrong.

- G Abdul Hamid J (as he then was, who later became the Lord President) said succinctly in *Chean Siong Guat v PP* [1969] 2 MLJ 63 at p 64: 'In weighing the testimony of witnesses, human fallibility in observation, retention and recollection are often recognised by the court.'

Finally, in *Tua Kin Ling v PP* [1970] 2 MLJ 61 at p 63, Syed Othman J said:

- H No doubt the rule is that if a witness had lied on one or two points it does not necessarily follow that his whole evidence should be rejected (*Khoon Chye Hin v PP* ([1961] MLJ 105)). But it is the duty of the court to sieve the evidence and to ascertain what are the parts of the evidence tending to incriminate the accused which could be accepted.

With this note, I shall now proceed to narrate the facts.

- I Arshad was not able to remember whether it was on 14 or 15 July 1994 that he was assigned to meet the informer at the Esso petrol station at the eighth milestone Scudai. It was at this meeting that the informer introduced the target by the name of John to Arshad. Once the introduction was completed, the informer made his exit. In that meeting Arshad introduced himself as 'brother' to John. The conversation between Arshad and John centred on the purchase of ganja. Arshad was interested in

purchasing 3 kgs of ganja at RM1,600 per kg. The two then parted company with John giving his handphone number to Arshad. It is apparent that Arshad must have forgotten John's handphone number for initially he gave the number as 010-798213 and later he said it was 010-789213. Arshad also gave his pager number 19991 to John. At this stage of the evidence Arshad forgot the sequence of the evidence and when pressed by the learned deputy public prosecutor, Arshad testified that he gave his pager number to John to enable the latter to contact him.

It is pertinent to point out that Arshad identified John as the third accused (hereinafter referred to as 'John' as averted to earlier).

On 15 July 1994 at about 8pm John paged Arshad. Arshad telephoned John and a message was relayed to the effect that John wanted to see Arshad at Taman Perling on 15 July 1994. Arshad then changed his mind and said it was on 16 July at 1pm at the Chinese coffee shop at Taman Perling that he was supposed to meet John. On 16 July 1994 at 12pm Arshad proceeded to Taman Perling with a police party and upon arrival, Arshad entered the Chinese coffee shop and waited for the arrival of John. Soon thereafter John arrived and he was seen driving a car, described as a blue black Proton Knight bearing registration number JBX 5482 (exh P11). John was accompanied by another male Malay who turned out to be the first accused. Both John and the first accused entered the Chinese coffee shop and they sat at the same table as Arshad. Without wasting time, Arshad asked John regarding the ganja which he ordered. John replied that he did not have it with him and that he would deliver it at the Senai airport at 8pm that night. In the meantime, John handed to Arshad a packet of ganja as a sample with the assurance that the same quality would be delivered to Arshad. All these was done in the presence of the first accused. John and the first accused then made their exit.

On 16 July 1994 at 7.50pm Arshad proceeded to Senai airport to wait for the first accused. Arshad then corrected himself to say that he was in fact waiting for John. Arshad testified that he went there accompanied by detective lance corporal 89356 Harun bin Pandak ('Harun') and they were travelling in a Proton Saga motorcar JBP 949. Arshad waited at the junction of Palm Reserve while Harun parked the motorcar. John then arrived alone driving a Vitara or Feroza bearing registration number JBG 64. When Arshad enquired about the ganja, John replied that the ganja would soon arrive and that the ganja would be delivered by the first accused. Both Arshad and John waited for the first accused for quite sometime. With no sign of the accused, Arshad decided to call it quits and before that he asked John to page him when the supply of ganja was ready for collection. They then parted company.

On 17 July 1994 at about 1am, John paged Arshad. As requested Arshad telephoned John and Arshad was told by John that the first accused's wife relayed the information that the first accused was not at home. Upon hearing this, Arshad told John to inform the first accused to page him. The next day meaning on 18 July 1994 the first accused paged Arshad. But Arshad was quick to say that it was on 17 July 1994 that the first accused paged him. On being paged by the first accused, Arshad telephoned the

A first accused but unfortunately when Arshad was cross-examined about the telephone number of the first accused, Arshad went blank—he was not able to remember. Be that as it may, Arshad telephoned the first accused and enquired as to why the first accused did not turn up on 16 July 1994 at Senai airport. The first accused explained that he had problems and that he promised to come the next day to deliver the ganja. It is at this stage, B that Arshad again suffered from memory lapse. Arshad simply said that on 18 July 1994 the first accused did not come and he did not elaborate further.

On 22 July 1994 at 10.30am John paged Arshad and the latter was requested to telephone the former. Arshad telephoned John and Arshad C was told that the 3 kgs of ganja would be delivered that night at 8pm at the carpark of Senai airport. Without further ado, Arshad informed Chief Inspector Nordin bin Kadir (PW8—‘Nordin’) about the impending transaction. Arshad at first testified that it was the first accused that would deliver the ganja and barely a second later Arshad said that it was John that D would deliver the ganja.

On 22 July 1994 at 6.30pm Arshad and a group of police personnel attended a briefing chaired by Nordin. In that briefing, Arshad was again assigned the task of being an agent provocateur. Nordin divided the police personnel into four groups and he gave them their respective duties. Arshad E again, at this juncture, had a relapse of memory and when pressed by the learned deputy public prosecutor, Arshad’s memory was jolted back to reality and he testified that upon seeing the ganja he was supposed to remove the white hat worn by him. Indeed this was the signal which Arshad was supposed to give and, upon seeing that signal, the police party was supposed to arrest the culprits. Nordin testified that in that briefing he handed RM4,800 to Arshad F as ‘wang tunjuk’, but somehow, Arshad did not avert to this point at all. This must have been the point which the learned deputy public prosecutor tried to introduce, without success, through Arshad.

On 22 July 1994 at 7pm Arshad and the police party proceeded to Senai airport. On arrival, Arshad took up position at the junction of Palm Reserve with Haron. At about 8pm, John paged Arshad. Arshad telephoned G John using a handphone and John informed Arshad that he would be late in that he would arrive at 9pm. It must be stressed here that Arshad just like his fellow police officers were supplied, that night, with walkie talkies. It was through the walkie talkie that Nordin monitored the development of the whole episode at the carpark of Senai airport and gave running H commentaries to the police party there. Thus, via the walkie talkie Arshad was told that John had arrived on a motorcycle at the Senai airport. Arshad then requested Haron to proceed to the carpark area and upon seeing John there astride the motorcycle, Arshad alighted from the motorcar and approached John. Haron proceeded to park the motorcar. Arshad enquired of John as to the supply of ganja. John replied that the first accused would I soon arrive with the consignment of ganja. Both then waited patiently for the arrival of the first accused.

On 22 July 1994 at 10.30pm, the first accused arrived in the same Proton Knight (P11) accompanied by the second accused. Arshad

approached the first accused and enquired about the ganja. The first accused replied that the ganja was at home. The first accused told Arshad that only two kgs of ganja was available and that one kg would be priced at RM2,000. Since Arshad agreed to the new terms, the first accused was prepared to supply the ganja. It was in evidence that when this discussion took place the second accused was about four feet away and he must have heard about the subject matter that was discussed as submitted by the learned deputy public prosecutor. The first accused then left the scene with the second accused.

On 22 July 1994 at 11.05pm, the first accused arrived at the carpark of Senai airport driving the same Proton Knight (P11) accompanied by the second accused who was seated at the front left passenger seat. As soon as the first accused parked the Proton Knight, Arshad approached him. The first accused alighted from the motorcar and stood to the right of the motorcar and said while pointing to the floor board of the front left passenger seat: 'Inilah ganja yang awak pesan.' By this time the second accused had also alighted from the motorcar. Arshad entered the motorcar particularly at the front left passenger side and on the floor board he saw one red plastic bag (P6B) and upon opening he saw two well-pressed packages as shown in the colour photograph at P9A. Using the ignition key of the Proton Knight (P11) as handed to him by the first accused, Arshad bore a hole in one of the packages in the presence of John and the second accused. Arshad saw what he believed to be ganja inside that package. This prompted Arshad to remove his white hat as a signal to the police party to move in and nab the culprits. Meanwhile, Arshad invited John to Arshad's car on the pretext of handing the money to him. A short while thereafter, detective corporal 70070 Abdul Jalil Rahmat (PW10—'Jalil') arrested John. On seeing this, Arshad quickly left the scene. As the police party converged at the area, the first and the second accused persons were seen running towards the direction of the Senai airport terminal. Fortunately, some police personnel were stationed there. It was in evidence that Nordin arrested the first accused whilst DSP Suraji bin Abdul Hamid (PW9) arrested the second accused. It was also in evidence that the first accused put up a struggle before being arrested. Chief Inspector Zulkifli bin Ali (PW6—'Zulkifli') examined the contents of the red plastic bag (P6B) in the presence of the three accused persons. Zulkifli saw one of the two packages had been torn and he found that it contained a hard compressed subject matter which he believed to be ganja therein. Zulkifli did not know who had torn that package. Using a key, Zulkifli then proceeded to poke the cover of the other package and he saw a hard compressed subject matter which he believed to be ganja therein. Zulkifli also examined a bag (D14) which was found in the boot of the Proton Knight (P11). Nothing was found in that bag (D14). On his return to his office, Zulkifli prepared a search list (P15) duly signed by all the three accused persons. It was in evidence that Zulkifli held the red plastic bag (P6B) with its contents from the scene to the police station. It was only on 23 July 1994 at 10.30am that Zulkifli handed all the exhibits to the investigating officer of the case, one Chief Inspector Wan Nasaruddin bin Hj Wan Mohd (PW13—'Nasaruddin'). Nasaruddin testified that the Proton

A Knight (P11) belonged to Abdul Rahman bin Kandar ('Rahman') who has since died and the death certificate (P18) was duly tendered as an exhibit. Before Rahman died his statement (P22) was recorded under s 112 of the CPC by Inspector Abdullah Sani bin Othman (PW15). That statement (P22) showed that at the material time the Proton Knight (P11) was rented by Amran bin Mohd Jusoh and guaranteed by the first accused.

B That explains the reason behind the cross-examination of Arshad by Mr Hisham Teh Poh Teik, the learned defence counsel for John, who put forth the suggestions to Arshad that the bag (D14) and the red plastic bag (P6B) with its incriminating contents belonged to Amran bin Mohd Jusoh. It was also suggested to Arshad that the meeting on 14 or 15 July 1994 at the Esso petrol station at the eighth milestone Scudai was between Amran bin Mohd Jusoh and Arshad. Arshad vehemently denied these suggestions.

C Through the evidence of lance corporal 100751 Amran bin Ngah Ahmad, the process server attached to the Johor Bahru courts, it was established that on 23 December 1995 at 5pm an attempt to serve the subpoena on Amran bin Mohd Jusoh at No 01-02, Block 10, Bandar Selesa Jaya, Scudai, Johor was fruitless. I was satisfied that the prosecution was not contravening s 114(g) of the Evidence Act 1950 by not making available Amran bin Mohd Jusoh. I too was satisfied that right from the start when John was first introduced to Arshad till the arrest of the three accused persons and the seizure of the ganja at the carpark of Senai airport, Amran bin Mohd Jusoh was not involved in the whole transaction. Admittedly the address of Amran bin Mohd Jusoh was extracted from the statement of Rahman (P22) and admittedly no statement was recorded from Amran bin Mohd Jusoh. It is now trite law that the prosecution has a discretion whether or not to call witnesses to give oral evidence in court. In relation to a summary trial, in an old case of *Teh Lee Tong v R* [1956] MLJ 194,

F Spenser Wilkinson J summarized the law with regard to the duty of the prosecution to call persons from whom statements have been recorded in the following way:

- (1) All the witnesses from whom statements have been taken should be brought to the court by the prosecution, except those whose evidence will clearly and obviously throw no light on the case; any witness not so brought to court must be made available to the accused, should he desire to call him.
- (2) Having brought the witnesses to court the prosecuting officer is not bound to call or to offer for cross-examination a witness whose evidence is in his opinion unnecessary or is obviously hostile.
- (3) The existence of witnesses brought to court but not called or offered for cross-examination under (2) above must be brought to the attention of the court so that they are available to be called by the defence, or by the court should the court consider this necessary.

The offer to the defence of any witness by the prosecution is patently necessary to avoid the presumption in s 114 (g) of the Evidence Act 1950. It is not out of place to mention here that the Privy Council in *Adel Muhammed El Dabbah v A-G for Palestine* [1944] AC 156 at p 168 laid down the now trite law that the prosecution in a criminal case has a discretion as to which witnesses should be called, and the court will not

interfere with the exercise of that discretion, unless it can be shown 'that the prosecutor has been influenced by some oblique motive'. This decision has since been dutifully followed by the Court of Appeal in the case of *Samsudin v PP* [1962] MLJ 405 at p 407 and *Khoon Chye Hin v PP* [1961] MLJ 105. Even Gunn Chit Tuan J (as he then was) sitting in the High Court in Penang in the case of *PP v Teh Cheng Poh* [1980] 1 MLJ 251 applied the same principle of law. An inroad was made into this principle by the case of *Abdullah Zawawi v PP* [1985] 2 MLJ 16 when the Supreme Court was called upon to decide the question that although the prosecution has the right not to call every witness from whom a police statement has been taken, how far does that right extend? The Supreme Court's answer was that the prosecution's right not to call a witness from whom statements have been taken must always be guided by its duty to discharge the onus of proof. This means that at the close of the prosecution's case when the evidence falls short of a prima facie case, the right not to call such witness or witnesses and to make him or them available to the defence will be of no avail. It seems that if doubts should arise out of gaps in the prosecution's case, the prosecution must close those gaps. That being the case, it is not for the defence to call the offered witness or witnesses to supplement the prosecution case. On the strength of these authorities, I ruled that Amran bin Mohd Jusoh need not be offered to the defence as, firstly, his statement was not recorded. and, secondly, there was no allegation of oblique motive on the part of the learned deputy prosecutor who conducted the prosecution. Thirdly, he could not be traced and, finally, he had no role at all to play as far as Arshad was concerned. To borrow the words of Mohamed Azmi SCJ (now FCJ) in *Munusamy v PP* [1987] 1 MLJ 492 especially at p 494, there was 'no withholding or suppression of evidence' and there was no 'non-production of not just any witness but an important and material witness to the case'.

At the end of the day, the lapses of memory experienced by Arshad as alluded to in the early part of this judgment do not affect his credibility as there was sufficient damning and incriminating evidence against all the three accused persons. I so hold accordingly.

As far as the exhibits were concerned, I was satisfied that there was no break in the chain of evidence unlike the situations that cropped up in *Mohd Osman bin Pawan v PP* [1989] 2 MLJ 110 and *PP v Chew Yoo Choi* [1990] 2 MLJ 444. There is no doubt at all as to the identity of the exhibits that were produced before this court and certainly this was quite unlike that that arose in *Abdul Jalil bin Abdul Satar v PP* [1991] 2 MLJ 194 (SC) and *Abdullah bin Yaacob v Pendakwa Raya* [1991] 2 MLJ 235 (SC).

It was argued that the evidence of Arshad should be rejected as it was entirely hearsay. It was said that the evidence of Arshad was not corroborated. From the evidence adduced by the prosecution, Arshad was clearly an agent provocateur and as such he was entitled to the protection afforded to him by the provisions of s 40A(1) and (2) of the Dangerous Drugs Act 1952 ('the Act'). In *Namasiyiam & Ors v PP* [1987] 2 MLJ 336 (SC) especially at p 343 it was held, inter alia, that there is no requirement for the evidence of an agent provocateur to be corroborated. It is my

A judgment that Arshad cannot be presumed to be a witness unworthy of credit and his evidence relating to any attempt to abet or abetment of the commission of an offence, if done for the purpose of securing evidence against the three accused persons, must be regarded as admissible.

B On the question of common intention, I need to quote in extenso a passage appearing in the judgment of Syed Agil Barakbah SCJ (as he then was) in the case of *Namasiyiam & Ors v PP* [1987] 2 MLJ 336 especially at p 344. It is as follows:

C In law, common intention requires a prior meeting of the minds and presupposes some prior concert. Proof of holding the same intention or of sharing some other intention, is not enough. There must be proof either by direct or by circumstantial evidence that there was (a) a common intention to commit the very offence of which the accused persons are sought to be convicted and (b) participation in the commission of the intended offence in furtherance of that common intention.

D Where the prosecution case rests on circumstantial evidence, the circumstances which are proved must be such as necessarily lead only to that inference. Direct evidence of a prior plan to commit an offence is not necessary in every case because common intention may develop on the spot and without any long interval of time between it and the doing of the act commonly intended. In such a case, common intention may be inferred from the facts and circumstances of the case and the conduct of the accused. (*The Supreme Court (of India) on Criminal Law* (1950-1960) JK Soonavala pp 188 to 193).

E In my judgment, the facts and circumstances of the case including the conduct of all the three accused persons raise an irresistible inference of common intention on their part and for brevity they may be summarized as follows.

F Firstly, the introduction between John and Arshad by the informer which led to the discussions of the supply of ganja between John and Arshad wherein the price of one kg of ganja was fixed at RM1,600 by John. In this meeting, Arshad ordered 3 kgs of ganja from John. This meeting led to another meeting at the Chinese coffee shop at Taman Perling between G John, Arshad and the first accused where John gave a packet of ganja as a sample to Arshad with the promise that the ganja that was scheduled to be delivered at the Senai airport would be of the same quality.

H Secondly, the meeting at Senai airport on 16 July 1994 at 7.50pm between Arshad and John. This meeting was abortive because the first accused who was supposed to bring the ganja did not turn up at all leaving both Arshad and John exasperated. It was at this meeting that John coaxed Arshad to wait for the arrival of the first accused.

I Thirdly, on 17 July 1994 at about 1am John paged Arshad and when the latter telephoned the former the message was relayed that the first accused was not at home. Arshad then told John to ask the first accused to page him. Later, the first accused paged Arshad. When Arshad telephoned the first accused, the latter offered his apologies for not turning up on 16 July 1994 and he promised to deliver the ganja. Up to this stage of the evidence, both John and the first accused knew that there was an impending sale of three kgs of ganja to Arshad.

Fourthly, on 22 July 1994 at 10.30am, John told Arshad that the three kgs of ganja would be delivered that night at 8pm at the carpark of Senai airport. True enough, that night John turned up on a motorcycle and together with Arshad they waited for the arrival of the first accused. It was at 10.30pm that the first accused arrived accompanied by the second accused in the same Proton Knight (P11). The first accused told Arshad that the ganja was at home and that he only had a supply of two kgs and that the price per one kg was RM2,000. Arshad agreed and both the first and the second accused then left the scene to fetch the ganja. At 11.05pm both of them returned to the scene conveying the ganja in the same motorcar. It was argued that the second accused was an innocent bystander oblivious of what had transpired. If that was the case why did the second accused accompany the first accused to the scene at 11.05pm? The conduct of the second accused returning to the scene with the first accused conveying the ganja in the same motorcar must surely be construed adversely against him. The second accused knew that on the floor board of the front passenger seat the ganja was neatly placed inside the red plastic bag (P6B) as he must have seen the first accused point at it while speaking to Arshad in these words: 'Inilah ganja yang awak pesan.' After John was arrested, both the first and the second accused fled in the direction of the airport terminal. This was certainly conduct reflective of their guilt. In my judgment, considering the facts and the circumstances of the case as whole, the prosecution succeeded in proving the bond of common intention between the three accused persons.

Next, it was argued that the evidence of the government chemist left an indelible mark on the prosecution's case in that it created a doubt as to whether the subject matter of the offence was indeed cannabis. Though the government chemist did say in his evidence that the cannabis in question was as defined in s 2 of the Act yet this was not reflected in the chemist report (D12) that was prepared by him. It is instructive to note that in the chemist report (D12), the government chemist merely said that 'Cannabis adalah seperti yang ditakrifkan di dalam Akta Dadah Berbahaya 1952.' It was even put to the government chemist that he had the benefit of reading the judgment of the Federal Court case of *Shukri bin Mohamad v Pendakwa Raya* [1995] 3 AMR 2695 and this must have prompted the government chemist to say that exhs P6E and P6G were cannabis within the meaning of s 2 of the Act. The government chemist testified that he adopted four tests and all these tests showed that the subject matter was cannabis within the definition section of s 2 of the Act, which at the material time, defined cannabis to mean 'any part of any plant of the genus cannabis from which the resin has not been extracted, by whatever name it may be designated'.

With regard to the physical test, the government chemist said: '... bahan tumbuhan tersebut mempunyai gross morphology sama dengan bahan cannabis.' The microscopic test revealed that: 'Resin di dalam keadaan asal, masih melekat dan banyak', whereas the *duquenois levine* test was said to reveal the presence of cannabinoids, an active ingredient of cannabis. Lastly, the TLC test showed that the 'bahan tumbuhan tersebut

- A mengandung component cannabinoids sama dengan cannabis.' But alas, under cross-examination the government chemist emphatically stated that: '... Indian Hemp adalah synonym kepada cannabis' and he agreed that: '... Indian Hemp serupa dengan cannabis.'

- B That being the case, it is not incorrect to say that the subject matter of the offence is also known as cannabis (Indian hemp) which is listed in Pt III of the First Schedule of the Act, though nowhere defined in the Act. Even though the government chemist in the present case went one step further than that of *Shukri* by mentioning the relevant tests conducted by him and giving the results of those tests, yet unlike *Shukri's* case, the government chemist here was left in a quandary when he said that Indian hemp was synonymous with cannabis. It seems to me, and it is my judgment, that the government chemist in the present case was doubtful whether the plant material which he had examined and analysed was cannabis as defined in s 2 of the Act and not cannabis (Indian hemp) as listed in Pt III of the First Schedule to the Act. If the government chemist in the present case were to say unequivocally that the cannabis here was not cannabis (Indian hemp) then the whole issue with regard to the subject matter of the offence would come to rest. But this was not to be. It is my judgment that the subject matter of the offence can also be regarded as cannabis (Indian hemp). Since there is this nagging doubt, the benefit of it should be given to the three accused persons. It is said that an accused person is entitled to the benefit of a reasonable doubt in the matter of sentence as in the matter of conviction (*Ma Shwe Yi* (1923) 1 Ran 751; *Gorakh* (1938) 40 PLR 542).

Lord Goddard in *R v Hepworth and Fearnley* [1955] 2 QB 600 at p 603; [1955] 2 All ER 918 at p 919 said:

- F Let us leave out of account, if we can, any expression such as 'giving the prisoner the benefit of the doubt'. It is not a question of giving the benefit of a doubt; if the jury are left with any degree of doubt whether the prisoner is guilty, then the case has not been proved.

- G It is not incorrect to say that the construction of a penal statute must be strictly construed. Any ambiguity, no matter how light, should be construed in favour of the offender. As Lord Esher MR, said in *Tuck v Priester* (1887) 19 QBD 629 at p 638:

- H We must be very careful in construing this section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction.

Plowman J in *Re HPC Productions Ltd* [1962] 2 WLR 51 said:

- I In construing a penal statute ... the question is simply what is the meaning of the words which the statute has used to describe the prohibited act or transaction? If these words have a natural meaning, that is their meaning, and such meaning is not to be extended by any reasoning based on the substance of the transaction. If the language of the statute is equivocal and there are two reasonable meanings of that language, the interpretation which will avoid the penalty is to be adopted.

I had no choice but to amend the charge at the end of the prosecution case to one of possession of 1,835.7g of cannabis (Indian hemp) under s 12(2) of the Act and punishable under s 12(3) of the Act read with s 34 of the Penal Code against all the three accused persons. Although s 158 of the CPC allows an amendment before judgment is pronounced, yet the courts have laid down the principle that the appropriate time to amend the charge would be at the end of the prosecution case. Thus, in *PP v Salamah bte Abdullah* and *PP v Ong Eng Kiat* [1947] MLJ 178 where the accused was charged with the offence of dishonestly receiving a watch and a pen and, after the evidence for the defence was given, the prosecution submitted that an offence of theft had been proved. The court then proceeded to frame a new charge under s 380 of the Penal Code; the accused pleaded not guilty to the new charge. At the appeal, the court was of the view that the appropriate time to amend the charge was at the end of the prosecution case. A similar approach was adopted by Hashim J in *PP v Tan Kim Kang & Ors* [1962] MLJ 388. Section 158(ii) of the CPC lays down the requirement that every amendment is to be read and explained to the accused and s 159 of the CPC requires a fresh plea to the new charge to be taken. It goes without saying that should the requirements in s 158(ii) of the CPC are not complied with, the consequences have been said to be grave. In *Singah Mohamed Hussin v PP* [1973] 2 MLJ 109, Syed Othman J (as he then was) was of the view that the omission by the learned magistrate to read and explain the amended charges to the appellant was an irregularity which was not curable by s 422 of the CPC as it was contrary to a statutory requirement, consequently, the conviction and sentence of the appellant were quashed and a retrial was ordered.

Here, the amended charge was individually read and explained to each of the three accused persons and each of them pleaded guilty to the amended charge and understood the nature and consequences of their respective plea. This court accepted their guilty plea on the amended charge and convicted them accordingly. It is perfectly legitimate to differentiate the sentencing between each of the three accused persons. This court has the right and the duty to decide whether to be lenient or severe: *R v Ball* (1951) 35 Cr App R 164. The foremost aspect of sentencing is public interest and this has been vigorously applied in the present case (see *PP v Sulaiman bin Ahmad* [1993] 1 MLJ 74 where the factors to be taken into account in sentencing were discussed). Of the three accused, John played a prominent role. He served as an umbilical cord to link the first accused to Arshad. The first accused's role too was not minimal. He conveyed the drug in the motorcar. Perhaps the minimal role was played by the second accused but relying on the 'common intention' that existed between all the three accused persons, the second accused's involvement became both grave and real. Having considered the mitigation pleas advanced on their behalf, I sentenced each of the three accused persons in this way:

The first accused was sentenced to five years imprisonment wef the date of his arrest (22 July 1994) and he was also fined RM1,500. The additional fine was imposed to reflect the gravity of the offence committed by the first accused.

A The second accused was sentenced to three years imprisonment wef the date of his arrest (22 July 1994). This sentence is reflective of the minimal role played by the second accused.

B John, the third accused, was sentenced to five years imprisonment wef the date of his arrest (22 July 1994) and he was also fined RM3,000. From the evidence, John deserved to be additionally fined at a higher rate than that of the first accused. It was through John that Arshad played his role as an agent provocateur successfully though with some hiccups on the way.

C I am not unmindful of s 283(i)(b)(4) of the CPC which enacts that the court passing the sentence of a fine may direct that in default of payment of the fine the offender shall suffer imprisonment of a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced or to which he may be liable under a commutation of sentence. I am of the considered view that the courts should not arbitrarily apply, as they have done in the past, s 283(i)(b)(4) of the CPC when imposing fines. For a start, the words employed in s 283(i)(b) of the CPC give some measure of discretion to the courts to decide on what to do when imposing fines. The choice is entirely with the court. Now, can the court refuse to exercise its discretion to 'do all or any of the following things' as specified therein. For convenience s 283(i)(b) of the CPC is reproduced hereinunder:

E 283(i) Where any fine is imposed under the authority of any law for the time being in force, then, in the absence of any express provision relating to such fine in such law contained, the following provisions shall apply (that is to say) —

F (b) in every case of an offence in which the offender is sentenced to pay a fine the court passing the sentence may, in its discretion, do all or any of the following things:

- G
- (1) allow time for the payment of the fine;
 - (2) direct payment of the fine to be made by instalments;
 - (3) issue a warrant for the levy of the amount by distress and sale of any property belonging to the offender;
 - (4) direct that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced or to which he may be liable under a commutation of sentence:

H Provided that where time is not allowed for the payment of such fine an order for imprisonment in default of payment shall not be issued in the first instance unless it appears to the court that such person has no property or insufficient property to satisfy the fine payable or that the levy of distress will be more injurious to him or his family than imprisonment;

- I
- (5) direct that such person be searched and that any money found on him when so searched or which, in the event of his being committed to prison, may be found on him when taken to prison, shall be applied towards the payment of such fine the surplus, if any, being returned to him:

Provided that such money shall not be so applied if the court is satisfied that the money does not belong to the person on whom it was found or that the loss of the money will be more injurious to him than his imprisonment; ...

The word 'may' appearing in s 283(i)(b) of the CPC gives a discretionary power to this court to exercise according to common sense and justice 'and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet' (per Willes J, in *Lee v Bude & Anor* (1871) LR 6 CP 576 at p 580). In my judgment, this court has the discretion not to 'do all or any of the following things' as specified therein in s 283(i)(b) of the CPC. That being the case and since this court imposes additional fines against the first and third accused without exercising the discretion to direct that in default of payment of those fines they should suffer imprisonment for a certain term, what can the learned deputy public prosecutor do to remedy the situation. The answer is not far to seek. Section 283(i)(g) of the CPC says that the fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if under the sentence the offender be liable to imprisonment for a longer period than six years then at any time previous to the expiration of that period, and the death of the offender does not discharge from the liability any property which would after his death be legally liable for his debts. The situation here is certainly unlike that of *Datuk Harun bin Hj Idris v Officer-In-Charge, Pudu Prison* [1981] 2 MLJ 72 (FC) where the learned Attorney General was merely doing his duty as a public servant by seeking the clarification from the court whether the sentences were to run concurrently or consecutively. Lee Hun Hoe CJ (Borneo) delivering the judgment of the Federal Court held that the learned judge was perfectly correct to state that a superior court as a court of record has an inherent jurisdiction to remedy mistakes in its record eg accidental omission. It was further held that the inherent power is an extraordinary power which ought to be exercised fairly, cautiously and rarely and only when the court considers that the ends of justice require it. Be that as it may, s 283(i)(g) of the CPC will certainly ensure that the fines imposed against the first and third accused may be levied in the event they see it fit not to pay those fines. In the final analysis, the discretion is entirely with the learned deputy public prosecutor to decide whether to pursue the matter against the first and third accused under s 283(i)(g) of the CPC or not. I am sure, in his wisdom, the learned deputy public prosecutor will quickly decide on his next course of action.

Charge amended and accuseds convicted on amended charge.

Reported by Ng Kian Pin